

Matter of: Thomas May Construction Company

File: B-255683

Date: March 23, 1994

Phillip E. Johnson for the protester.
Garrett L. Rensing, Esq., Department of the Navy, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester did not diligently pursue basis of protest where the protester waited until after it received notice of award to pursue the information under the Freedom of Information Act (FOIA) upon which it based its protest, inasmuch as that same information was publicly available from the time of bid opening; protest based upon information obtained in response to FOIA request filed more than 10 working days after award is dismissed as untimely.

DECISION

Thomas May Construction Company protests the award of a contract to Turner Caribe under invitation for bids (IFB) No. N62470-93-B-3133, issued by the Department of the Navy. The protester claims that Turner Caribe's bid is nonresponsive because its bid bond was defective.

We dismiss the protest as untimely filed.

The IFB, to build the Combined Support Maintenance Shop at the National Guard facility, St. Croix, United States Virgin Islands, required each bidder to submit an adequate bid bond. The bids were opened on September 16, 1993. Turner Caribe submitted the low bid and Thomas May the second low bid. Award was made to Turner Caribe on September 29. On October 4, Thomas May filed a Freedom of Information (FOIA) request with the agency, in which it requested a copy of Turner Caribe's bid. Thomas May received this information from the agency on November 3. This protest to our Office followed on November 5.

Bid protests are serious matters which require effective and equitable procedural standards assuring a fair opportunity to have objections considered consistent with the goal of not unduly disrupting the procurement process.

Heroux, Inc., B-237432.2, June 8, 1990, 90-1 CPD ¶ 542. Accordingly, our Bid Protest Regulations, 4 C.F.R. Part 21 (1993), contain strict timeliness requirements for filing protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2); Health Research Assocs., Inc., B-237075.2, June 8, 1990, 90-1 CPD ¶ 541. Moreover, a protester cannot sit idly by while awaiting information that provides the basis for its protest, but instead must diligently pursue the information within a reasonable time. Hartford Constr. Corp., B-235642.2, Aug. 29, 1989, 89-2 CPD ¶ 187.

Here, Thomas May sought the publicly available information that formed the basis for its protest only after it was apprised that award was made to a lower-priced bidder. Since this procurement was conducted by sealed bidding, there was a public opening of the bids, Federal Acquisition Regulation (FAR) § 14.402-1(a), and once bids were opened, the public, including the protester, was permitted to examine the bids submitted. FAR § 14.402-1(c). Thomas May made no effort to examine or obtain a copy of any of the bids submitted once bids were opened; it did nothing until after it received the award announcement. Where there is a public bid opening, we think it is incumbent upon bidders to act promptly after bid opening to obtain information on the bids received, including copies of the bids themselves if necessary, so that upon receipt of notice of award the bidders will be aware of any alleged defect in the winning bid that would provide a basis for protest. See Haz-Stor Co., B-251248, Mar. 18, 1993, 93-1 CPD ¶ 242. Here, we find that Thomas May did not diligently pursue the basis of its protest as it should have promptly sought the publicly available information prior to award.

Because Thomas May's protest was filed November 9, more than 10 working days after it was apprised of the September 29 award, its protest is untimely.

The protest is dismissed.

Robert P. Murphy
Acting General Counsel